



INTERIOR BOARD OF INDIAN APPEALS

Five Sandoval Indian Pueblos v. Deputy Commissioner of Indian Affairs

21 IBIA 17 (10/10/1991)

Related Board case:
21 IBIA 72



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

FIVE SANDOVAL INDIAN PUEBLOS, INC.

v.

DEPUTY COMMISSIONER OF INDIAN AFFAIRS

IBIA 91-128-A

Decided October 10, 1991

Appeal from the denial of an application for a grant under the Small Tribes Program.

Vacated and remanded.

1. Appeals: Jurisdiction--Board of Indian Appeals: Jurisdiction--
Bureau of Indian Affairs: Administrative Appeals: Generally

Once an appeal is filed with the Board of Indian Appeals from a decision issued by a Bureau of Indian Affairs official, the Bureau loses jurisdiction over the matter except to participate in the appeal as a party.

2. Appeals: Generally--Board of Indian Appeals: Jurisdiction--Bureau of Indian Affairs: Administrative Appeals: Generally

If, during the course of an appeal to the Board of Indian Appeals, the Bureau of Indian Affairs determines that the decision on appeal was incorrect, it can: (1) request that the decision be vacated and the matter remanded in order to grant the relief the appellant requests, (2) confess error and ask the Board to reverse the decision, or (3) enter into a settlement with the appellant. Each of these actions is taken through the filing of an appropriate document with the Board.

APPEARANCES: Raymond Gachupin, Chairman, Governing Board, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Five Sandoval Indian Pueblos, Inc., seeks review of a July 29, 1991, decision of the Deputy Commissioner of Indian Affairs, Bureau of Indian Affairs (Deputy Commissioner; BIA), denying appellant's application for funding under the Small Tribes Program. For the reasons discussed below, the Board of Indian Appeals (Board) vacates that decision and remands this matter to the Deputy Commissioner for further action.

Appellant's notice of appeal was forwarded to the Board by the Acting Director, Office of Tribal Services, Bureau of Indian Affairs (BIA), on August 28, 1991. The Board issued a predocketing notice on August 28, 1991, received the administrative record on September 16, 1991, and issued a notice of docketing on September 17, 1991.

On October 1, 1991, the Board received a letter from appellant asking it to cancel the appeal. The request was "predicated on correspondence dated September 13, 1991 * * * received from the Office of [the] Deputy Commissioner of Indian Affairs * * * informing our organization that we would continue to be funded for the 1991 Fiscal Year" (Letter at 1).

From the dates recited above, it is clear that the action which precipitated appellant's decision to withdraw its appeal was taken by the Deputy Commissioner after the matter had been transferred to the Board. The Board was not notified that any action was being taken in the matter.

The Board has previously discussed in considerable detail the problems arising when BIA takes action on a matter that is pending before the Board. That discussion is here repeated:

[1] The problem raised by this scenario is procedural, rather than substantive. * * * [O]nce an appeal is filed with the Board from a decision issued by a BIA official, BIA loses jurisdiction over the matter except to participate in the appeal as a party. As the Board stated in Tonkawa Tribe of Oklahoma v. Acting Anadarko Area Director, 18 IBIA 370, 371 (1990):

In Interim Ad Hoc Committee of the Karok Tribe v. Sacramento Area Director, 13 IBIA 76, 83-85, 92 I.D. 46, 50-51 (1985), the Board held that under long established Departmental precedents, BIA lost jurisdiction over a matter once it was notified that an appeal had been filed. This rule was established to prevent the obvious confusion that would result if two offices of the Department were to exercise jurisdiction over the same matter simultaneously. Under this rule, when [the Deputy Commissioner] received appellant's original notice of appeal, [he] lost authority to take further action in this matter, except to participate as a party to the appeal.

This rule is not imposed merely to force the [Deputy Commissioner] to "jump through procedural hoops" or to "protect the Board's turf." The requirement is part of every orderly review system, including BIA's own internal review system, ^{1/} and is intended to ensure that only one forum has authority to act at any particular point in time so that the parties involved know exactly where they stand.

^{1/} See, e.g., Fox v. Muskogee Area Director, 18 IBIA 444, 449 n.8 (1990).

[2] In the present case, the [Deputy Commissioner] proceeded improperly. Once appellant filed an appeal to the Board, the [Deputy Commissioner] lacked independent authority to grant appellant's application. This does not mean that the [Deputy Commissioner] could not determine that the grant application should be approved. If, during the course of an appeal, BIA determines that the original decision was incorrect, it can: (1) request that the decision be vacated and the matter remanded to BIA in order to grant the relief the appellant requests, (2) confess error and ask the Board to reverse the decision, or (3) enter into a settlement with the appellant. Each of these actions [is] taken through the filing of an appropriate document with the Board.

Thus, when the [Deputy Commissioner] determined in this case that his earlier decision was incorrect, he should have presented this information to the Board and asked for authority to grant the relief appellant requested. Because the Board actively encourages resolution of disputes between the parties, any such request from the [Deputy Commissioner] would have been expeditiously and favorably considered.

Raymond v. Acting Aberdeen Area Director, 19 IBIA 41, 42-43 (1990).

As in Raymond, although the Deputy Commissioner's actions were procedurally incorrect, the Board must determine what effect to give to his September 13, 1991, letter to appellant. Although the Board has not seen this letter, it accepts appellant's statement that the letter resolves the controversy between appellant and the Deputy Commissioner. The Board has determined to construe the Deputy Commissioner's September 13, 1991, letter as a request that the matter be remanded to him to grant the relief requested by appellant. Appellant has indicated that it has no objection to such action.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Deputy Commissioner's July 29, 1991, decision is vacated and this matter is remanded to him for implementation of the action apparently set forth in his letter of September 13, 1991.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed

Anita Vogt
Administrative Judge